(8)

No. 02-891

Supreme Court, U.S.
FILED
JAN 22 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CENTRAL LABORERS' PENSION FUND,
Petitioner,

v.

THOMAS E. HEINZ and RICHARD J. SCHMITT, JR.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 10, 2002
CERTIORARI GRANTED DECEMBER 1, 2003

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The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari.

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Opinion of the United States District Court for the Central District of Illinois 33a

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

No. 99-CV-1388

THOMAS E. HEINZ and RICHARD J. SCHMITT, JR.,
Plaintiffs,

v.

CENTRAL LABORERS' PENSION FUND,
Defendant.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
12/10/99	2	COMPLAINT filed; case referred to Robert J. Kauffman, U.S. Magistrate Judge. (ml) [Entry date 12/14/99] [Edit date 12/14/99]
2/7/00	4	MOTION by defendant Central Laborers' PF for summary judgment (sh) [Entry date 02/09/00]
2/7/00	6	MEMORANDUM IN SUPPORT of motion for summary judgment [4-1] by defendant Central Laborers' PF (sh) [Entry date 02/09/00]
2/7/00	7	STATEMENT OF FACTS (Undisputed) by defendant Central Laborers' PF in support of motion for summary judgment [4-1] (sh) [Entry date 02/09/00]
2/7/00	8	APPENDIX filed by defendant Central Laborers' PF re motion for summary judgment [4-1] (sh) [Entry date 02/09/00]

DATE	NO.	PROCEEDINGS
2/14/00	9	MEMORANDUM IN SUPPORT of motion for summary judgment [4-1] by plaintiff Thomas E. Heinz (sh) [Entry date 02/15/00]
2/14/00	10	MOTION by plaintiff Thomas E. Heinz for order for additional discovery under Rule 56(f) (Affidavits Unavailable) (sh) [Entry date 02/15/00]
2/25/00	11	ANSWER by defendant Central Laborers' PF (hw) [Entry date 02/29/00]
2/25/00	12	RESPONSE by defendant Central Laborers' PF to motion for order for additional discovery under Rule 56(f) (Affidavits Unavailable) [10-1] (hw) [Entry date 02/29/00]
4/6/00		MINUTE-ENTRY: by Chief Judge Joe B. McDade. Parties present in open court by Attys. Gasick/Wilday/O'Hara for Rule 16 conference on 4/6/00. Argument re: motion for rule 56(f) discovery. Motion passed to be revisited if and when Court proceeds on Summary Judgment motion. Summary Judgment motion held in abeyance. Court consider*[s] [it]* appropriate for parties to file motion*[s]* for judgment on the pleadings instead of summary judgment. Parties to file motion*[s]* for judgment on the pleadings by Mtn filing ddl of 5/8/00; responses due within 14 days thereafter (misc ddl for responses set 5/22/00). (cc: all counsel) (sh) [Entry date 04/10/00]

DATE	NO.	PROCEEDINGS
5/8/00	13	MOTION by plaintiff Thomas E. Heinz, plaintiff Richard J. Schmitt Jr. for judgment on the pleadings (kb) [Entry date 05/08/00]
5/8/00	14	MEMORANDUM IN SUPPORT of motion for judgment on the pleadings [13-1] by plaintiff Thomas E. Heinz, plaintiff Richard J. Schmitt Jr. (kb) [Entry date 05/08/00]
5/8/00	15	MOTION by defendant Central Laborers' PF for judgment on the pleadings (hw) [Entry date 05/09/00]
5/8/00	16	MEMORANDUM IN SUPPORT of motion for judgment on the pleadings [15-1] by defendant Central Laborers' PF (hw) [Entry date 05/09/00]
5/22/00	17	RESPONSE by plaintiffs Thomas E. Heinz and Richard J. Schmitt Jr. to *[motion for judgment on the pleadings][[15-1]]* (ww) [Entry date 05/22/00]
5/22/00	18	RESPONSE by defendant Central Laborers' PF to motion for judgment on the pleadings [13-1] (rk) [Entry date 05/24/00]
8/9/00	19	ORDER by Chief Judge Joe B. McDade – Plaintiff's motion for judgment on the pleadings (motion for summary judgment) [13-1] is DENIED. Defendant's motion for judgment on the pleadings [15-1] is ALLOWED. Defendant's motion for summary judgment [4-1] is mooted by this Order. Case terminated. (cc: all counsel) (sh) [Entry date 08/09/00]

DATE	NO.	PROCEEDINGS
8/9/00	20	JUDGMENT in a civil case entered (cc: all counsel) (sh) [Entry date 08/09/00]
9/5/00	21	NOTICE OF APPEAL by plaintiff from Dist. Court decision [20-1] (cc: all counsel) (sh) [Entry date 09/5/00]
9/5/00	22	JURISDICTIONAL DOCKETING STATEMENT filed by plaintiff (sh) [Entry date 09/05/00]
9/5/00	25	Received appeal fee in amount of $105.00 (Receipt #39634) (rk) [Entry date 09/07/00]
10/16/02	33	MANDATE from USCA reversing and remanding the Decision of the District Court [Appeal [21-1] (cad) [Entry date 10/16/02]
10/18/02	34	MOTION by plaintiffs Thomas E. Heinz and Richard J. Schmitt Jr. for judgment on the pleadings and damages following the 9/13/02 judgment by the US Court of Appeals for the 7th Circuit (ww) [Entry date 10/21/02]
11/1/02	36	MOTION by defendant to strike plaintiff's motion for judgment on the pleadings and damages (sh) [Entry date 11/04/02]
11/1/02	37	MEMORANDUM IN SUPPORT of motion to strike plaintiff's motion for judgment on the pleadings and damages [36-1] by defendant (sh) [Entry date 11/04/02]
11/5/02	38	MEMORANDUM IN SUPPORT of motion for judgment on the pleadings and damages following the 9/13/02 judgment by the US Court of Appeals for the 7th Circuit [34-1] and Reply to Defendant's Motion to Strike by plaintiffs (sh) [Entry date 11/05/02]

DATE	NO.	PROCEEDINGS
11/5/02	38	Memorandum of Law in Support of Plaintiffs' Motion for Judgment on the Pleadings and Damages Following the 9/13/02 Judgment by the U.S. Court of Appeals for the Seventh Circuit and Reply to motion to strike plaintiff's motion for judgment on the pleadings and damages [36-1] (sh) [Entry date 11/05/02]
11/15/02	40	SUPPLEMENT by plaintiffs Thomas E. Heinz, Richard J. Schmitt Jr. to Motion for Judgment on the Pleadings [34-1] (cad) [Entry date 11/15/02]
1/14/03	42	ORDER by Chief Judge Joe B. McDade granting motion for judgment on the pleadings and damages following the 9/13/02 judgment by the US Court of Appeals for the 7th Circuit [34-1]. Judgment is to be entered in favor of Plaintiffs. Regarding the issue of damages, it does not appear as if there is sufficient evidence in the record for the Court to assess damages accurately. Accordingly, the Court will convene a hearing to discuss the issue of damages on Fri., 1/31/03 at 1:30 PM (via phone – court to call). Further ordered that motion to strike plaintiff's motion for judgment on the pleadings and damages [36-1] is DENIED. (cc: all counsel) (sh) [Entry date 01/14/03]
4/18/03	46	MOTION by plaintiffs for judgment regarding the issue of damages (sh) [Entry date 04/21/03]

DATE	NO.	PROCEEDINGS
5/2/03	47	RESPONSE by defendant to motion for judgment regarding the issue of damages [46-1] and Defendant's Request for Deferral or Stay (sh) [Entry date 05/02/03]
5/2/03	48	MEMORANDUM IN SUPPORT of Defendant's response to Plaintiffs' Motion for Judgment Regarding the Issue of Damages and Defendant's Request for Deferral or Stay [47-1] (sh) [Entry date 05/02/03]
5/5/03	49	RESPONSE by plaintiff to Defendant's "Request" or Motion "for Deferral or Stay" [47-1] (sh) [Entry date 05/05/03]
5/16/03	50	Supplemental RESPONSE by defendant Central Laborers' PF to motion for judgment regarding the issue of damages [46-1] (rk) [Entry date 05/16/03]
5/16/03	52	NOTICE from CA7 that mandate is recalled and is stayed pending writ of certiorari (hw) [Entry date 05/27/03]
5/19/03	51	ORDER from Supreme Court—Ordered that the mandate of the US Court of Appeals for the Seventh Circuit, Case No. 00-3314, issued 10/15/02, is hereby recalled and stayed pending the disposition by this Court of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition for a writ of certiorari is granted, this stay shall terminate upon the sending down of the judgment of this Court. (FAX DOCUMENT) (sh) [Entry date 05/20/03]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 00-3314

THOMAS E. HEINZ and RICHARD J. SCHMITT, JR.,
Appellants,

v.

CENTRAL LABORERS' PENSION FUND,
Appellee.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9/8/00	Private civil case docketed. [00-3314] [1323915-1] Transcript information sheet due 9/18/00. Fee or IFP forms due on 9/22/00 for Thomas E. Heinz, for Richard J. Schmitt. (joce)
11/1/00	Filed 15c appellant's brief by Thomas E. Heinz, Richard J. Schmitt. Disk filed. [00-3314] [1340520-1] (joce)
12/1/00	Filed 15c appellee's brief by Central Laborers Pen. Disk filed. [00-3314] [1350496-1] (joce)
12/18/00	Filed 15c appellant's reply brief by Thomas E. Heinz, Richard J. Schmitt. Disk filed. [00-3314] [1355767-1] (squi)
2/12/01	Case heard and taken under advisement by panel: Circuit Judge Richard D. Cudahy, Circuit Judge Ilana D. Rovner, Circuit Judge Ann C. Williams. [00-3314] [1371540-1] (broo)

DATE	PROCEEDINGS
9/13/02	Filed opinion of the court by Judge Williams. REVERSED and REMANDED. Because this opinion conflicts with the Fifth Circuit's decision in Spacek, it has been circulated pursuant to Circuit Rule 40(e) to all members of the court in regular active service. A majority did not wish to hear the case en banc. Judge Evans voted to grant rehearing en banc. Circuit Judge Richard D. Cudahy, dissenting, Circuit Judge Ilana D. Rovner, Circuit Judge Ann C. Williams. [00-3314] [1323915-1] (tiff)
9/13/02	ORDER: Final judgment filed per opinion. With costs: y. [00-3314] [1546794-1] (tiff)
9/27/02	Filed motion by Appellee Central Laborers Pen. to stay the mandate. [1551569-1] [00-3314] (hudk)
10/10/02	Filed Appellant Richard J. Schmitt, Appellant Thomas E. Heinz response to Appellee Central Laborers Pen. motion to stay the mandate. [1555846-1] [1555846-1] [00-3314] (hudk)
10/11/02	ORDER issued DENYING motion to stay the mandate. [1551569-1] RMV [00-3314] (squi)
10/15/02	MANDATE ISSUED AND ENTIRE RECORD RETURNED. (Contents returned: 1 vol. pleadings). [NOTE: Mandate recalled by U.S. Supreme Court on 5/16/03.] [00-3314] [1443097-1] (cove)
12/17/02	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 02-891. [00-3314] [1576929-1] (land)

DATE	PROCEEDINGS
5/16/03	Filed order from the Supreme Court that the mandate issued on 10/15/02 is recalled and stayed pending the disposition of the Petition for Writ of Certiorari. Dist. [00-3314] [1323915-1] (jame)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CAPTION OMITTED

COMPLAINT

Thomas E. Heinz and Richard J. Schmitt Jr., by their attorney, GERY R. GASICK, complain as follows:

INTRODUCTION

1. Plaintiffs allege that the Central Laborers' Pension Fund ("Fund") violated Section 204(g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1054(g), by suspending their monthly retirement benefits of $1,676.50 and $1,652.32, respectively, by means of a 1998 Amendment to the Pension Plan ("Plan") which redefined "disqualifying employment" rules, approximately 2 years after Plaintiffs retired.

Alternatively, Plaintiffs seek to declare a construction of the 1998 Amendment that would determine that the suspension of monthly retirement benefits violated the 1998 Amendment itself. Section 502 of ERISA, 29 U.S.C. § 1132(a)(3), allows a participant "to enjoin any act or practice which violates... the terms of the plan. . . ."

PARTIES

2. The Plaintiffs, residents of Peoria County, Illinois, are "participants" in the Plan. They retired approximately December 1, 1996 pursuant to a "30 credit pension" prior to

attaining age 60. Shortly thereafter they commenced work as supervisors (non-union management) in the construction industry while receiving their pension benefits and continued to so work after the "disqualifying employment" rules were amended by the 1998 Amendment.

3. Plaintiffs' monthly retirement benefits were suspended within months of the 1998 Amendment of Section 6.7 of the Plan, redefining "disqualifying employment."

4. According to its Summary Plan Description, the Fund is a trust fund established to provide retirement benefits to employees working under the jurisdiction of the local unions which participate in the Central Laborers' Pension Fund. The Agreement and Declaration of Trust, originally dated January 1, 1965, and since amended, establishes the Fund. The Trust Agreement and the Pension Plan govern the operation of the Fund. A Board of Trustees acts on behalf of the employees in managing the Fund's operations and is made up of an equal number of union and employer representatives.

5. The Fund is headquartered in Jacksonville, Illinois. The "participating local union" No.165 is the Peoria, Illinois local where Plaintiffs' membership is based and the only local where Plaintiffs had membership throughout their 20 plus years as construction workers. Approximately 66 local unions, located throughout Illinois, participate in the Fund.

JURISDICTION

6. The Court has federal question jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132 in that Plaintiffs allege a violation of ERISA, 29 U.S.C. §§ 1001-1461.

VENUE

7. Venue is proper under 28 U.S.C. § 1391(b)(2) and 29 U.S.C. § 1132(e) in that a substantial part of the events or omissions giving rise to the claim occurred in Peoria County

Illinois and/or the "breach took place" in Peoria County Illinois (29 U.S.C. §1132(e)(2)).

BACKGROUND

8. Section 6.3 of the Plan provides, in pertinent part:

Section 6.3. Action of Trustees.

The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties.

Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform nondiscriminatory manner.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Board of Trustees for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in Section 6.4. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter. (Emphasis added).

9. Plaintiffs exhausted their appeal rights under §6.4 of the Plan as the Fund Office informed Plaintiffs that the Plan Trustees "denied" their appeal.

10. Section 8.1 of the Plan provides:

Section 8.1. Amendments.

This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant, except:

(a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or

(b) If the amendment meets the requirements of Section 302(c)(8) of ERISA [29 U.S.C. §1082] and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendments and has either approved of it or, within 90 days after the date on which such notice was filed, he failed to disapprove.

11. At the time Plaintiffs retired in December of 1996 "Amendment No. 4 to the Pension Plan of the Central Laborers' Pension Fund" effective October 1, 1996 ("1996 Amendment") provided in pertinent part:

Section 6.7. Suspension of Benefits:

(a) Suspension of Benefits Before Age 60.

The monthly benefit shall be suspended for any month in which the Participant worked or was paid for at least 40 hours in Disqualifying Employment, as defined in Section 6.7(b).

(b) Disqualifying Employment Before Age 60.

1. "Disqualifying Employment" for the period before age 60, is employment with an Employer in a job classification of any type specified and covered in a collective bargaining agreement or in any occupation or job classification where contributions are to be made to the Fund pursuant to a written agreement (either as a union or non-union construction worker).

(The complete 1996 Amendment of Section 6.7 is attached as Exhibit A).

12. Plaintiffs retired following the 1996 Amendment referenced above in Paragraph 11 and thereafter commenced receiving monthly benefits under the Plan of $1,676.50 (Heinz) and $1,652.32 (Schmitt), all while working in a non-union supervisory/management position in the construction industry which was not "disqualifying employment" under the 1996 Amendment to Section 6.7 (b)(1) of the Plan.

13. Approximately 2 years after Plaintiffs' retirement, "Amendment No. 7 to the Pension Plan of the Central Laborers' Pension Fund," effective October 1, 1998, ("1998 Amendment") provided in pertinent part:

Section 6.7 - Suspension of Benefits:

(a) An Employee shall have his pension suspended for any period of Disqualifying Employment as defined below.

(b) Employees who initially retired prior to October 1, 1998, Disqualifying Employment shall be defined as follows:

(1) Initially retired prior to the Participant's 53rd birthday: Disqualifying Employment with an Employer in any capacity in the construction

industry (either as a union or non-union construction worker).

(The complete 1998 Amendment of Section 6.7 is attached at Exhibit B).

14. Within months of the 1998 Amendment, noted above in Paragraph13, Plaintiffs' monthly retirement benefits were suspended by the Fund and that suspension continues to date.

FIRST CAUSE OF ACTION

VIOLATION OF § 204(g) of ERISA

(29 U.S.C. §1054(g))

15. Section 204(g)(1) of ERISA provides that accrued benefits cannot be reduced or eliminated by plan amendment. Section 204(g)(2) of ERISA provides that a plan amendment that eliminates or reduces early retirement benefits or retirement-type subsidies, shall be treated as reducing accrued benefits.

16. The monthly retirement benefits received by Plaintiffs prior to the 1998 Amendment are accrued benefits.

17. Plaintiffs have always satisfied the 1996 Amendment eligibility requirements of Section 6.7 by not engaging in "disqualifying employment" as defined in the 1996 Amendment.

18. The Fund has suspended Plaintiffs' monthly retirement benefits from approximately February 1, 1999 to date.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against defendant, Central Laborers' Pension Fund and request the following relief:

(a) that the Court declare the Fund's suspension of Plaintiffs' monthly retirement benefits, via the 1998 Amendment, arbitrary and capricious and a violation of § 204(g) of ERISA;

(b) that the Plaintiffs receive monthly retirement benefits from the date of suspension by the Fund to date and in the future while Plaintiffs satisfy the terms and conditions of the Plan as they existed prior to the 1998 Amendment;

(c) that previously suspended monthly retirement benefits be paid Plaintiffs with pre-judgment interest from February 1, 1999 and any post judgment interest.

(d) that Plaintiffs be awarded attorney's fees and costs under 29 U.S.C.§1132(g) upon a finding that the Fund acted in bad faith in suspending Plaintiffs' monthly retirement benefits, or that said suspension or the defense to these proceedings, was not substantially justified;

(e) that Plaintiffs be awarded such further relief as this Court deems just and proper.

SECOND CAUSE OF ACTION

(DECLARATORY RELIEF)

19. Alternatively, Plaintiffs seek declaratory relief pursuant to 28 U.S.C. § 2201 for the purpose of determining a question of actual controversy among the parties involving the actual construction and scope of the 1998 Amendment of Section 6.7 of the Plan pursuant to 29 U.S.C. § 1132(a)(3).

20. Approximately 2 years after Plaintiffs' retirement, "Amendment No. 7 to the Pension Plan of the Central Laborers' Pension Fund," effective October 1, 1998, ("1998 Amendment") provided in pertinent part:

Section 6.7 - Suspension of Benefits:

(a) An Employee shall have his pension suspended for any period of Disqualifying Employment as defined below.

(b) For Employees who initially retired prior to October 1, 1998, Disqualifying Employment shall be defined as follows:

(1) Initially retired prior to the Participant's 53rd birthday: Disqualifying Employment with an Employer in any capacity in the construction industry (either as a union or non-union construction worker).

(The complete 1998 Amendment of Section 6.7 is attached at Exhibit B).

21. Within months of the1998 Amendment noted above in paragraph 20, Plaintiffs' monthly retirement benefits were suspended by the Fund and that suspension continues to date.

22. The pertinent part of the 1998 Amendment referenced above in paragraph 20 can and should be construed, focusing equally on the language in parentheses, to have application against Plaintiffs only if they were in fact performing the work of a "construction worker" and not when performing the work of supervisors, in management, which has never been within the scope of a collective bargaining agreement and not within the usual and customary definition of "construction worker."

23. The parenthetical language, "either as a union or non union construction worker" is designed to suspend Plaintiffs' retirement benefits if they tried to work, as a construction worker, at a non-union job site. Furthermore, rules of gramatical construction dictate that the words "union or non-union" are adjectives of "construction worker." A management position is the antithesis of "construction worker." The focus of the application of the 1996 and 1998 Amendments at Section 6.7(b)(1) is that the employee must be a "construction worker," first and foremost.

See for comparison the complete, age and date indexed, provisions of Section 6.7 of the 1998 Amendment attached at Exhibit B and the 1996 Amendment at Exhibit A.

WHEREFORE, Plaintiffs pray, in the alternative, that this Court enter judgment in their favor and against Defendant, Central Laborers' Pension Fund and request the following relief:

(a) declare that Plaintiffs post-retirement employment as supervisors in management positions in the construction industry does not violate the 1998 Amendment of Section 6.7 of the Plan and that the Fund's suspension of Plaintiffs' retirement benefits was arbitrary and capricious;

(b) that the Plaintiffs receive monthly retirement benefits from the date of suspension by the Fund to date and in the future while Plaintiffs satisfy the terms and conditions of the Plan as provided in the 1998 Amendment;

(c) that previously suspended monthly retirement benefits be paid Plaintiffs with pre-judgment interest from February 1, 1999 and any post judgment interest.

(d) that Plaintiffs be awarded attorney's fees and costs under 29 U.S.C.§ 1132(g) upon a finding that the Fund acted in bad faith in suspending Plaintiffs' monthly retirement benefits, or that said suspension or the defense to these proceedings, was not substantially justified;

(e) that Plaintiffs be awarded such further relief as this Court deems just and proper.

THOMAS E. HEINZ and
RICHARD J. SCHMITT JR.,
Plaintiffs

BY: /s/ Gery R. Gasick
GERY R. GASICK, Their Attorney

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CAPTION OMITTED

ANSWER

NOW COMES Defendant CENTRAL LABORERS' PENSION FUND, ("Fund"), by its attorneys, Cavanagh & O'Hara and Brown, Hay & Stephens, and for its Answer to the Complaint filed herein states as follows:

1. Paragraph 1 of Plaintiffs' Complaint does not allege facts, and contains only conclusions of law; Defendant contests the legal conclusions contained therein;

2. Defendant admits the factual allegations of Paragraph 2 of Plaintiffs' Complaint;

3. Defendant admits the factual allegations of Paragraph 3 of Plaintiffs' Complaint;

4. Defendant admits the factual allegations of Paragraph 4 of Plaintiffs' Complaint;

5. Defendant admits the factual allegations of Paragraph 5 of Plaintiff's Complaint;

6. Paragraph 6 of Plaintiffs' Complaint does not contain factual allegations, but only averments of law; Defendant admits said averments of law;

7. Defendant admits that venue is proper as alleged in Paragraph 7 of Plaintiffs' Complaint; Defendant contests the legal conclusions contained therein;

8. Defendant admits the factual allegations of Paragraph 8 of Plaintiffs' Complaint;

9. Defendant admits the factual allegations of Paragraph 9 of Plaintiffs' Complaint;

10. Defendant admits the factual allegations of Paragraph 10 of Plaintiffs' Complaint;

11. Defendant admits the factual allegations of Paragraph 11 of Plaintiffs' Complaint;

12. Defendant admits the factual allegations of Paragraph 12 of Plaintiffs' Complaint;

13. Defendant admits the factual allegations of Paragraph 13 of Plaintiffs' Complaint;

14. Defendant admits the factual allegations of Paragraph 14 of Plaintiffs' Complaint;

15. To the limited extent that Paragraph 15 of Plaintiffs' Complaint summarizes Section 204(g) of ERISA, Defendant admits the same. Defendant affirmatively states in answer to Paragraph 15 of Plaintiffs' Complaint that Section 204(g) of ERISA speaks for itself;

16. Defendant admits the factual allegations of Paragraph 16 of Plaintiffs' Complaint;

17. Defendant admits the factual allegations of Paragraph 17 of Plaintiffs' Complaint;

18. Defendant admits the factual allegations of Paragraph 18 of Plaintiffs' Complaint;

19. Paragraph 19 of Plaintiffs' Complaint does not allege facts, and contains only conclusions of law; Defendant contests the legal conclusions contained therein;

20. Defendant admits the factual allegations of Paragraph 20 of Plaintiffs' Complaint;

21. Defendant admits the factual allegations of Paragraph 21 of Plaintiffs' Complaint;

22. Paragraph 22 of Plaintiffs' Complaint does not allege facts, and contains only conclusions of law; Defendant contests the legal conclusions and arguments of law contained therein;

23. Paragraph 23 of Plaintiffs' Complaint does not allege facts, and contains only conclusions of law; Defendant contests the legal conclusions and arguments of law contained therein;

WHEREFORE, Defendant, CENTRAL LABORERS' PENSION FUND, prays that Plaintiffs' Complaint be denied and dismissed and costs assessed against them.

CENTRAL LABORERS'
PENSION FUND,
Defendant

By: /s/ Patrick J. O'Hara
One of Its Attorneys

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EXCERPTS FROM CENTRAL LABORERS' PENSION FUND, SUMMARY PLAN DESCRIPTION, REVISED AND EFFECTIVE JULY 1, 1995

IMPORTANT TO REMEMBER

* Save this booklet.

* Tell your family, particularly your spouse, about this booklet and where you keep it filed.

* If you lose your copy, you can ask the Fund Office for another.

* If you have worked in employment covered by the Plan and earned five or more credits and you are leaving without definite plans to return, you may be entitled to a pension, payable when you have reached retirement age. To protect your benefit rights, call or write the Fund Office. Arrangements will be made to furnish you with a statement of your benefit rights. In that case, the Fund will also file notice with the government so that the Social Security Administration can remind you at a future time of your vested pension rights.

* Notify the Fund Office promptly if you change your address. If the Trustees are unable to reach you at your last address on record, any benefit payments will be held without interest.

* Nothing in the general description is meant to interpret or change in any way the provisions expressed in the Plan. Only the full Board of Trustees is authorized to interpret the Pension Plan described in this booklet. No employer or union nor any representative of any employer or union, in such capacity, is authorized to interpret this Plan nor can any such person act as agent of the Trustees. The Trustees reserve the right to amend, modify or discontinue all or part of this Plan whenever, in their judgment, conditions so warrant.

* Refer to page 139 of this booklet for an explanation of the February 1, 1996 revision to the Lump Sum Payment Option.

* * *

HIGHLIGHTS OF THE PENSION PLAN

1. The Pension Fund is a trust fund set up to provide Retirement benefits to employees working under the jurisdiction of the local unions which participate in the Central Laborers' Pension Fund.

2. At the start, the Central Laborers' Pension Fund covered Laborers within the jurisdiction of Local Union #253, affiliated with the Laborers' International Union of North America, AFL-CIO. Since January 1, 1965, other Locals have collectively bargained for employer contributions to the Pension Fund and their members are now covered under the Pension Plan.

3. There is no compulsory Retirement date under this Plan.

4. The Pension Plan provides several types of monthly pensions for qualified Laborers who retire from Covered Employment. They are:

a. A Regular Pension for persons age 63 or older with at least 5 Pension Credits, including one earned during the contribution period.

b. An Early Retirement Pension for persons who choose to retire between the ages of 53 and 63 and have at least 5 Pension Credits, including one earned during the Contribution Period.

c. A Disability Pension for persons who become permanently and totally disabled, have at least 5 Pension Credits, worked 250 hours in Covered Employment in

the Plan Credit Year the disability began or either of the two previous Plan Credit Years, and have at least one Pension Credit earned at a contribution rate of at least $0.18.

d. A Deferred Pension for persons who have at least 5 Pension Credits.

e. A Service-Only Pension for persons who have 30 or more Pension Credits or 30 or more Years of Vesting Service in Covered Employment. A person who meets either of these requirements may retire at any age without reduction of payment before age 63.

f. A Reciprocal Pension to permit a Laborer to combine his Pension Credits earned from this Pension Fund and other Laborers' pension funds which have signed the Laborers' International Reciprocal Agreement so that he can qualify for a pension.

g. A pension for persons who have attained Normal Retirement Age (age 65 at the earliest) and are actively at work, regardless of their number of Pension Credits or Years of Vesting Service.

5. The monthly pension amount payable is based on the number of Pension Credits earned by an employee and the contribution rates at which he worked. On the following pages are examples of current Retirement benefits.

6. Once an employee retires, benefits will be continued for life so long as he remains retired. Upon his death, benefits may be continued to his surviving spouse.

7. In certain instances, survivor benefits or death benefits are also payable if an employee dies before Retirement.

8. An employee who is eligible for a Regular, Early Retirement, Disability or Service-Only Pension of $100 or more per month may elect to have his monthly pension

benefit reduced by not more than 10% in order that he may receive a lump-sum payment when he retires.

9. All pension benefits from this Plan are in addition to any benefits that a retired employee may receive under the Social Security law.

10. An appeal procedure is provided for a person whose application for benefits is partially or fully denied (see page 96).

11. Certain types of employment by a pensioner are prohibited under the Plan and result in the suspension of a pensioner's monthly pension during that period. A pensioner who returns to work as a Laborer must notify the Fund Office. The Plan rules regulating employment after Retirement and the appropriate appeal procedure are described in Article 6 of the Plan.

12. All Laborers who retire under the Plan receive a special newsletter which provides interesting information about the industry and your Plan.

* * *

EXCERPTS FROM CENTRAL LABORERS' PENSION FUND RESTATED PLAN RULES AND REGULATIONS, AMENDED AND RESTATED EFFECTIVE OCTOBER 1, 1994

(Previously Amended and Restated Effective October 1, 1989)

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APPENDIX B
CENTRAL LABORERS PENSION FUND
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ARTICLE 1
DEFINITIONS

Section 1.1. Trust Agreement.

"Trust Agreement" means the Agreement and Declaration of Trust establishing the Central Laborers' Pension Fund dated effective as of January 1, 1965 and as thereafter amended and restated.

Section 1.2. Pension Fund or Fund.

"Pension Fund" or "Fund" means the Central Laborers' Pension Fund established under the Trust Agreement.

* * *

Section 1.4. Pension Plan or Plan.

"Pension Plan" or "Plan" means this document as adopted by the Trustees and as thereafter amended by the Trustees.

* * *

Section 1.6. Contributing Employer or Employer.

"Contributing Employer" or "Employer" means an employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund, an employer (including the Union) signatory to any other agreement requiring contributions to this Fund who, in writing, adopts and agrees to be bound by the terms of the Trust Agreement

and such other persons considered an employer under the Trust Agreement. An employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

* * *

Section 1.8. Employee.

"Employee" means an employee covered by a Collective Bargaining Agreement or any written agreement requiring Employer contributions on his behalf including such other persons who can be considered an Employee under the Trust Agreement. However, no officer or stockholder having a direct or indirect controlling interest in any corporation which now or hereafter has a Collective Bargaining Agreement with the Union requiring periodic contributions to the Pension Fund; or any partner of a partnership or member of an organization or association which now or hereafter has a Collective Bargaining Agreement with the Union requiring periodic contributions to the Pension Plan shall be considered an Employee under this Pension Plan.

Section 1.9. Covered Employment.

"Covered Employment" means employment of an Employee by an Employer for which the Employer is obligated by its Agreement to contribute to the Fund, including such employment prior to the Contribution Period which if performed during the Contribution Period would have resulted in contributions being paid to the Fund.

Section 1.10. Participant.

"Participant" means a Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article 2, or a former Employee who has acquired a right to a pension under this Plan.

* * *

Section 1.12. Pensioner.

"Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

* * *

Section 1.14. Normal Retirement Age.

"Normal Retirement Age" means age 65, or, if later, the age of the Participant on the tenth anniversary of his participation.

Notwithstanding the foregoing, for a Participant who completes one or more hours of Service after September 30, 1987, "Normal Retirement Age" means age 65 or, if later, the age of the Participant on the fifth anniversary of his participation.

In calculating the fifth or tenth anniversary of participation, participation before a Permanent Break in Service shall not be counted.

* * *

Section 1.19. Service.

Each Employee will be credited with an hour of Service for:

(a) each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and

(b) each hour for which an Employee is paid, or entitled to payment, by an Employer, directly or indirectly, including payments for disability from the Central Laborers' Welfare Fund but excluding any time

compensated under a workers' or workmen's compensation or unemployment compensation law or a plan pursuant to a mandatory disability benefits law and excluding any hours of nonwork time in excess of 501 in any one continuous period. Two periods of paid nonwork time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least ninety days. These hours shall be credited to the Employee for the computation period or periods in which the nonperformance period occurred; and

(c) each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment was made.

* * *

ARTICLE 3
PENSION ELIGIBILITY AND AMOUNTS

Section 3.1. General.

This article sets forth the eligibility conditions and benefit amounts for the pensions provided by this Plan. The accumulation and retention of Pension Credits and Years of Vesting Service for eligibility are subject to the provisions of Article 4. The benefit amounts are subject to reduction on account of the Husband-and-Wife Pension (Article 5). Entitlement of an eligible Participant to receive pension benefits is subject to his retirement and application for benefits, as provided in Article 6.

Section 3.2. Special Benefit at or After Normal Retirement Age.

(a) A Participant who has attained Normal Retirement Age shall be eligible for a pension regardless of his number of Pension Credits or Years of Vesting Service. The amount of the pension shall be determined in accordance with Section 3.18.

(b) An individual will not be a Participant at Normal Retirement Age, and, therefore, will not be entitled to a benefit under Subsection (a) above, unless any prior One-Year Break in Service has been repaired in accordance with Section 2.4.

Section 3.3. Regular Pension—Eligibility.

(a) For retirements on or after October 1, 1993, a Participant may retire on a Regular Pension if he meets the following requirements:

(1) he has attained age 63, and

(2) he has at least five Pension Credits, of which at least one Pension Credit was based on Work in Covered Employment during the Contribution Period.

(b) For retirements on or after October 1, 1992 and prior to October 1, 1993, a Participant may retire on a Regular Pension if he meets the following requirements:

(1) he has attained age 63, and

(2) he has at least seven Pension Credits, of which at least one Pension Credit was based on Work in Covered Employment during the Contribution Period.

(c) For retirements on and after October 1, 1987 and prior to October 1, 1992, a Participant may retire on a Regular Pension if he meets the following requirements:

(1) He has attained age 63, and

(2) he has at least 10 Pension Credits, of which at least one Pension Credit was based on work in Covered Employment during the Contribution Period

* * *

Section 3.5. Early Retirement Pension—Eligibility.

(a) For retirements on or after October 1, 1993, a Participant may retire on an Early Retirement Pension if he meets the following requirements:

(1) he has attained age 53; and

(2) he has at least five Pension Credits, of which at least one Pension Credit was based on Work in Covered Employment during the Contribution Period.

(b) For retirements on or after October 1, 1992 and prior to October 1, 1993, a Participant may retire on an Early Retirement Pension if he meets the following requirements:

(1) he has attained age 53; and

(2) he has at least seven Pension Credits, of which at least one Pension Credit was based on Work in Covered Employment during the Contribution Period.

(c) For retirements on or after October 1, 1987 and prior to October 1, 1992, a Participant may retire on an Early Retirement Pension if he meets the following requirements:

(1) He has attained age 53, and

(2) he has at least 10 Pension Credits of which at least one Pension Credit was based on work in Covered Employment during the Contribution Period.

Section 3.6. Early Retirement Pension—Amount.

The monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced by a factor appropriate to the Employee's attained age at the effective date of his Early Retirement Pension in accordance with the Table of Early Retirement Factors as shown in Appendix A.

* * *

Section 3.13. Service-Only Pension—Eligibility.

A Participant may retire on a Service Pension on or after October 1, 1986 if he has a total of 30 Pension Credits or 30 Years of Vesting Service based on Work in Covered Employment. Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b).

Section 3.14. Service-Only Pension—Amount.

The monthly amount of the Service-Only Pension is the same as the Regular Pension prior to any adjustment for payment in the form of a Husband-and-Wife Pension.

* * *

Section 3.24. Application of Benefit Increases.

The pension to which a Participant is entitled shall be determined under the terms of the Plan as in effect at the time the Participant separates from Covered Employment.

A Participant shall be deemed to have separated from Covered Employment on the last day of work which is followed by a One-Year Break in Service except if he subsequently earns at least one Year of Vesting Service.

* * *

ARTICLE 4
PENSION CREDITS AND
YEARS OF VESTING SERVICE

Section 4.1. Pension Credits.

(a) For Employment during the Contribution Period.

(1) General Rule.

For periods during the Contribution Period, a Participant shall be credited with Pension Credits on the basis of his

hours of work in Covered Employment on which contributions to the Pension Fund were made. For hours of Work on or after October 1, 1994, Pension Credit shall be granted in accordance with the following schedule:

[Schedule Omitted]

* * *

Section 4.2. Year of Vesting Service.

(a) General Rule. A Participant shall be credited with one Year of Vesting Service for each Plan Credit Year during the Contribution Period (including periods before he became a Participant) in which he completed at least 1,000 hours of Service in Covered Employment. This rule is subject to the provisions of the following subsections.

* * *

ARTICLE 6

APPLICATIONS, BENEFIT PAYMENTS, RETIREMENT AND BENEFIT SUSPENSIONS

* * *

Section 6.3. Action of Trustees.

The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties.

Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform nondiscriminatory manner.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of

this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Board of Trustees for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in Section 6.4. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter.

Section 6.4. Right to Appeal.

(a) The Employee shall notify the Fund Office of his desire to apply for benefits and upon such notification, the Fund Office shall furnish the Employee with an application form and instructions on how to complete the form and submit other documentary evidence required to supplement said application.

(b) Upon receipt of the completed application and supporting documentary evidence, the Fund Office shall review the same and if necessary shall advise the Employee of any additional information, documents or explanations required. Upon receipt of all materials requested, unless notified that the Employee cannot furnish the materials requested, the Fund Office shall promptly review the application and supporting documents and then file same with the Board of Trustees along with the recommendations as to approval or denial of the application and the reasons therefor.

(c) The Board of Trustees at its next regular monthly meeting subsequent to receipt of the applications and recommendations will consider the same and approve or deny the benefits applied for.

(d) In the event the application is denied by the Board of Trustees, notice of said decision shall be promptly communicated, in writing, to the Employee.

(e) Upon denial of the application by the Board of Trustees, the Employee shall be entitled to the following rights and procedures:

(1) A statement of the reason or reasons for denial of the application.

(2) The right to submit additional proofs.

(3) The right to examine any evidence in possession of the Fund adverse to the application.

(4) The right within 60 days of receipt of the notice of denial of his application to appeal the decision of the Board of Trustees to the full Board of Trustees, the same to be done by written petition addressed to the Board of Trustees setting forth the precise grounds for the appeal, that is, a clear statement as to which of the reasons for the denial of the application he disagrees with and why he disagrees with the same.

(5) The right, upon appeal to the Board of Trustees, to request in his appeal petition to appear before said Board for a hearing on the merits of his appeal petition. In the event such a request is made, the hearing shall be held at the next regular meeting of the full Board of Trustees or at such other time as may be agreed upon by the Employee and said Board of Trustees. In the absence of such a request, the Board of Trustees shall at its next regular meeting review the entire application and supporting evidence and approve or deny the application.

(6) The right to present witnesses, evidence and arguments at the hearing and cross examine such witnesses as may appear and offer evidence opposed to the application.

(7) The legally recognized rules of evidence shall be a guide for the conduct of said hearing but shall not be directly applied to the same.

(8) Upon completion of the hearing and any adjournments thereof and after full and complete opportunity to be heard has been afforded the Employee, the Board of Trustees shall, within 30 days thereafter, notify the Employee, in writing, of its decision allowing or denying the application and appeal and, in the event of a denial, the notice shall set forth the reason for said denial.

(9) The decision of the Board of Trustees shall be final and binding on all parties interested in the same and shall not be subject to further review by any court or the Fund.

(f) In the event of denial of the application by the Board of Trustees, the notice of decision of the Board of Trustees required by Subsection 6.4(d) shall contain a statement of all of the rights and procedures set forth in Subsection 6.4(e) hereof.

* * *

Section 6.6. Retirement.

(a) General Rule. To be considered retired, a Participant must have separated from Covered Employment and not be engaged in disqualifying employment as defined in Section 6.7(a) and (b).

(b) Exceptions. Effective June 1, 1993, a Participant who has separated from his previous employment, as defined in Subsection 6.6(a), and who has attained age 53 shall be considered retired notwithstanding subsequent employment or reemployment with a covered Employer for less than 40 hours in any month.

Section 6.7. Suspension of Benefits.

(a) Before Age 53.

(1) Effective on and after October 1, 1993, the monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment, as defined in Paragraph 6.7(b)(1), before he has attained age 53.

(2) Effective October 1, 1994, a Participant retires on a 30 Credit Pension, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 40 hours in "Disqualifying Employment."

(b) Age 53 or Older and before Age 60.

(1) Effective on and after October 1, 1993, the monthly benefit shall be suspended for any month in which the Participant worked or was paid for at least 40 hours in Disqualifying Employment, as defined below, upon attaining age 53 and before he has attained age 60.

"Disqualifying Employment" for the period before age 60, is:

(A) employment with an Employer in a job classification of any type specified and covered in the Collective Bargaining Agreement;

(B) employment in work regularly performed by Laborers or any other Building Trades Craftsmen;

(C) employment in the same or related business as any Contributing Employer;

(D) employment in any work which is or may be under the jurisdiction of the Union; or

(E) employment of any kind involving or resulting in earnings in excess of the maximum annual earnings permitted by the Social Security Administration before any reduction is made in the amount of a person's Social Security benefits.

(2) If the Participant has failed to notify the Plan of employment that may be the basis for suspension of benefits under Paragraph (1) above, in accordance with the notification requirements of Subsection 6.7(d), or has willfully misrepresented to the Plan with respect to disqualifying employment, the monthly benefit shall be suspended for an additional period of from six (6) to twelve (12) months over and above the suspension period of the preceding sentence, as the Board of Trustees shall determine based on the lateness of the notification and the reasons for the failure to notify in a timely manner.

(b) After Age 60.

(1) If the Participant has attained age 60, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 40 hours in "Disqualifying Employment". After attainment of age 60, "Disqualifying Employment" means employment or self-employment that is in an industry covered by the Plan when the Participant's pension began, in the geographic area covered by the Plan when the Participant's pension began and in any occupation in which the Participant worked under the Plan at any time or any occupation covered by the Plan at the time the Participant's pension payments began. However, if a Participant worked in Covered Employment only in a skilled trade or craft, that is, as a Laborer, employment or self-employment shall be disqualifying only if it is in work that involves the skill or skills of that trade or craft directly or, as in the case of supervisory work, indirectly. However, in any event, any work for at least 40 hours in a month for which contributions are required to be made to the Plan shall be disqualifying.

(2) The term "industry covered by the Plan" means any industry in which Employees covered by the Plan

were employed when the Participant's pension began or, but for suspension under this article, would have begun.

(3) The term "geographic area covered by the Plan" means the State of Illinois and all of any standard metropolitan statistical area which falls within Illinois and any other area in which Covered Employment was performed when the Participant's pension began or, but for suspension under this article, would have begun.

The geographic area covered by the Plan shall also include any area covered by a plan which, under a reciprocal agreement in effect when the Participant's pension payments began, had forwarded contributions to this Plan, on the basis of which this Plan accrued benefits for the Participant.

(4) If a retired Participant re-enters Covered Employment to an extent sufficient to cause a suspension of benefits, and his pension payments are subsequently resumed, the industry and area covered by the Plan "when the Participant's pension began" shall be the industry and area covered by the Plan when his pension was resumed.

(5) Paid non-work time shall be counted toward the measure of 40 hours if paid for vacation, holiday, illness or other incapacity, layoff, jury duty, or other leave of absence.

(6) Notwithstanding any other provision of this section, as of April 1 of the calendar year following the year in which the Participant attains age 70 1/2, no employment will be considered Disqualifying Employment with respect to such Participant.

(7) Effective on and after October 1, 1994, all Pensioners (except those receiving a Disability Pension) may work up to 39 hours per month without suspension of their monthly pension benefit.

(c) Definition of Suspension. "Suspension of benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments, pursuant to Subsection 6.7(g), and in accordance with Section 6.3.

(d) Notices.

(1) Upon commencement of pension payments, the Trustees shall notify the Pensioner of the Plan rules governing suspension of benefits, including identity of the industries and area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or area covered by the Plan.

(2) A Pensioner shall notify the Plan in writing within 15 days after starting work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Pensioner has worked in disqualifying employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that he has ceased disqualifying employment. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of benefits.

If a Pensioner has worked in disqualifying employment for any number of hours for a contractor at a building or construction site and he has failed to give

timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in such work for as long as the contractor has remained actively engaged at that site. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of his benefits.

The Trustees shall inform all retirees at least once every 12 months of the reemployment notification requirements and the presumptions set forth in this paragraph.

(3) A Pensioner whose pension has been suspended shall notify the Plan when disqualifying employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.

(4) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.

(5) The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his disqualifying employment ends. If the Plan intends to recover prior overpayments by offset under Paragraph 6.7(g)(2), the suspension notice shall explain the offset procedure and identify the amount expected to be recovered and the periods of employment to which they relate.

(e) Review. A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees as set forth in Section 6.4.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

(f) Resumption of Benefit Payments.

(1) Benefits shall be resumed for the months after the last month for which benefits were suspended, with payments beginning no later than the third month after the last calendar month for which the Participant's benefits was suspended, provided the Participant has complied with the notification requirements of Paragraph 6.7(d)(3) above.

(2) Overpayments attributable to payments made for any month or months for which the Participant had disqualifying employment shall be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit for a month after the Participant attained Normal Retirement Age shall not exceed 25 percent of the pension amount (before deduction), except that the Plan may withhold up to 100 percent of the first pension payment made upon resumption after a suspension. If a Pensioner dies before recovery of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or Spouse, subject to the 25 percent limitation on the rate of deduction.

* * *

Section 6.9. Vested Status or Non-forfeitability.

(a) The Employee Retirement Income Security Act requires that certain of the benefits under this Plan be vested (in the term used in the Act, "nonforfeitable").

(b) Vested Status is earned as follows:

(1) A Participant's right to his normal retirement benefit is nonforfeitable upon his attainment of Normal Retirement Age except to the extent that benefits are cancelled pursuant to Section 7.4 because the employer has ceased to contribute to the Plan with respect to the employment unit in which the Participant was employed.

(2) A Participant, excluding any former Participants who were deceased before October 1, 1993, acquires Vested Status after completion of five years of Vesting Service.

A Participant, excluding any former Participants who were deceased before October 1, 1992, acquires Vested Status after completion of seven Years of Vesting Service (except for Years of Vesting Service that are not taken into account because of a Permanent Break in Service).

(c) ERISA also provides certain limitations on any plan amendment that may change the Plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant who has credit for at least three Years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within 60 days after the latest of the following dates:

(1) When the amendment was adopted,

(2) when the amendment became effective, or

(3) when the Participant was given written notice of the amendment.

(d) For purposes of applying the provisions of this section and of determining when a Participant has acquired non-forfeitable rights, as defined under the law, the vesting schedule of this Plan consists of 100 percent non-forfeitability for a Participant who has completed at least five, seven or 10 Years of Vesting Service, whichever is applicable. While this Plan provides Regular, Deferred, Early Retirement, Minimum, Service-Only, and Disability Pensions on the basis of requirements that may be met by some Participants who have not completed five, seven or 10 Years of Service whichever is applicable. Such eligibility rules represent provisions of the Plan above and beyond its vesting schedule.

* * *

ARTICLE 8
AMENDMENTS

Section 8.1. Amendments.

This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant, except:

(a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or

(b) If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendments and has either approved of it or, within 90 days after the date on which such notice was filed, he failed to disapprove.

EXCERPTS FROM AMENDMENT NO. 4 TO THE PENSION PLAN OF THE CENTRAL LABORERS' PENSION FUND, EFFECTIVE OCTOBER 1, 1996

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6. Subsections (a) and (b) of Section 6.7 are deleted in their entirety and replaced with the following:

(a) Suspension of Benefits Before Age 60.

The monthly benefit shall be suspended for any month in which the Participant worked or was paid for at least 40 hours in Disqualifying Employment, as defined in Section 6.7 (b).

(b) Disqualifying Employment Before Age 60.

(1) "Disqualifying Employment" for the period before age 60, is employment with an Employer in a job classification of any type specified and covered in a collective bargaining agreement or in any occupation or job classification where contributions are to be made to the Fund pursuant to a written agreement (either as a union or non-union construction worker).

(2) If the Participant has failed to notify the Plan of employment that may be the basis for suspension of benefits under Paragraph (1) above, in accordance with the notification requirements of Subsection 6.7 (d), or has willfully misrepresented to the Plan with respect to disqualifying employment, the monthly benefit shall be suspended for an additional period of from six (6) to twelve (12) months over and above the suspension period of the preceding sentence, as the Board of Trustees shall determine based on the lateness of the notification and the reasons for the failure to notify in a timely manner.

(3) The Trustees shall determine that a Participant is working in Disqualifying Employment by requesting that the Participant provide them with a copy of wage, payroll, or other employment records including but not limited to copies of his Social Security earnings records.

* * *

EXCERPTS FROM AMENDMENT NO. 5 TO THE PENSION PLAN OF THE CENTRAL LABORERS' PENSION FUND, EFFECTIVE OCTOBER 1, 1996

3. Effective January. 1, 1997, Section 3.13 is deleted in its entirety, and replaced with the following:

Section 3.13. Service-Only Pension—Eligibility.

A Participant may retire on a Service-Only Pension if he meets one of the following requirements:

(a) A Participant who first entered the Plan on or after January 1, 1997, or who entered the Plan on or after January 1, 1997 after incurring a Permanent Break in Service, as defined in Sections 4.3 (c), (d) or (e), may retire on a Service Pension if he has a total of 25 Years of Vesting Service, as defined in Section 4.2, based on Work in Covered Employment. Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b).

Vesting Service for purposes of the Service-Only Pension, as defined in Section 3.13(a), must be earned as a Participant in the Central Laborers' Pension Fund.

(b) A Participant who entered the Plan prior to January 1, 1997, may retire on a Service Pension if he has a total of 30 Pension Credits or 30 Years of Vesting Service based on Work in Covered Employment. Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b).

* * *

8. Subsection (a) of Section 4.2 is deleted in its entirety and replaced with the following:

(a) General Rules.

(1) A Participant shall be credited with one Year of Vesting Service (or fraction thereof), for each Plan Credit Year during the Contribution Period (including periods before he became a Participant) on or after October 1, 1996 according to the following schedule:

Hours of Work in Covered Employment During a Plan Credit Year	Years of Vesting Service
0-199	0.0
200-299	0.2
300-399	0.3
400-499	0.4
500-599	0.5
600-699	0.6
700-799	0.7
800-899	0.8
900-999	0.9
1,000 or more	1.0

(2) A Participant shall be credited with one Year of Vesting Service for each Plan Credit Year during the Contribution Period (including periods before he became a Participant) prior to October 1, 1996 in which he completed at least 1,000 hours of Service in Covered Employment.

These rules are subject to the provisions of the following subsections.

EXCERPTS FROM AMENDMENT NO. 6 TO THE PENSION PLAN OF THE CENTRAL LABORERS' PENSION FUND, EFFECTIVE OCTOBER 1, 1997

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6. Section 6.7 (b) (6) is deleted in its entirety and amended to read as follows:

Notwithstanding any other provision of this section, prior to October 1, 1997, no employment after April 1 of the calendar year following the calendar year in which the Participant attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant.

Effective October 1, 1997, if the Participant attains age 70-½ prior to January 1, 1996, he may elect that no employment after April 1 of the calendar year following the calendar year in which he attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant. If he elects to defer commencement of his Pension until the April 1 following the calendar year is [sic] which he retires, all employment after the April 1 following the calendar year is [sic] which he retires shall be considered Disqualifying Employment. If the participant attains age 70-½ after December 31, 1995, all employment after the April 1 following the calendar year is [sic] which he retires shall be considered Disqualifying Employment.

EXCERPTS FROM AMENDMENT NO. 7 TO THE PENSION PLAN OF THE CENTRAL LABORERS' PENSION FUND, EFFECTIVE OCTOBER 1, 1998:

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1. Section 1.6, Contributing Employer or Employer, is deleted in its entirety and amended to read as follows:

Section 1.6—Contributing Employer or Employer:

"Contributing Employer" or "Employer" means an employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund or an employer (including the Union) signatory to any other agreement requiring contributions to this Fund who, in writing, adopts and agrees to be bound by the terms of the Trust Agreement and such other persons considered an employer under the Trust Agreement.

"Non-Construction Contributing Employer", "Non-Construction Employer" or "Employer" means an employer who becomes signatory, to a Collective Bargaining Agreement with the Union requiring contributions to this Fund on or after May 1, 1998 with employees who do not work in the construction industry or an employer with non-bargained employees that becomes signatory to any other agreement requiring contributions to this Fund on or after May 1, 1998 who, in writing, adopts and agrees to be bound by the terms of the Trust Agreement and such other persons considered an employer under the Trust Agreement.

An employer or non-construction employer shall not be deemed a Contributing Employer or Non-Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer or Non-Contributing Employer.

2. Section 1.8, Employee, is deleted in its entirety and amended to read as follows:

Section 1.8 - Employee:

"Employee" means an employee covered by a Collective Bargaining Agreement or any written agreement requiring contributions on his behalf including such other persons who can be considered an Employee under the Trust Agreement.

* * *

5. Section 3.4, Regular Pension—Amount, is deleted in its entirety and amended to read as follows:

Section 3.4—Regular Pension—Amount:

(a) For retirements on or after October 1, 1994, the monthly amount of the Regular Pension is equal to the sum of (1) and (2) below:

(1) $4.03 for each Pension Credit based on work in Covered Employment prior to January 1, 1965, plus

(2) an amount for each Pension Credit earned during the Contribution Period in accordance with the following schedule:

Pension Credit Earned prior to 10/1/76 at a Contribution Rate of:	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit
—	$.10 to .11	$ 3.48	$ 1.00	$ 47.04
$ .10	.12 to .17	4.36	1.05	49.65
.15	.18 to .23	6.63	1.10	52.26
.20	.24 to .29	9.40	1.15	54.88
.25	.30 to .35	12.22	1.20	57.45
.30	.36 to .41	14.98	1.25	60.13
.35	.42 to .47	17.77	1.30	62.72
.40	.48 to .53	20.55	1.35	65.34
.45	.54 to .59	23.35	1.40	67.96
.50	.60 to .64	26.14	1.45	70.54
	.65 to .69	28.76	1.50	73.17
	.70 to .74	31.37	1.55	75.78
	.75 to .79	33.96	1.60	78.42
	.80 to .84	36.59	1.65	81.02
	.85 to .89	39.19	1.70	83.63
	.90 to .94	41.79	1.75	86.22
	.95 to .99	44.43	1.80	88.85
	$ 1.85	$ 91.40	$ 2.95	$138.90

Pension Credit Earned prior to 10/1/76 at a Contribution Rate of:	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit
	1.90	94.22	3.00	140.98
	1.95	96.70	3.05	143.07
	2.00	99.32	3.10	145.15
	2.05	101.40	3.15	147.23
	2.10	103.47	3.20	149.31
	2.15	105.55	3.25	151.39
	2.20	107.30	3.30	153.47
	2.25	109.72	3.35	155.55
	2.30	111.80	3.40	157.63
	2.35	113.88	3.45	159.71
	2.40	115.96	3.50	161.79
	2.45	118.05	3.55	163.87
	2.50	120.14	3.60	165.95
	2.55	122.23	3.65	168.03
	2.60	124.31	3.70	170.12
	2.65	126.40	3.75	172.20
	2.70	128.47	3.80	174.28
	2.75	130.56	3.85	176.36

Pension Credit Earned prior to 10/1/76 at a Contribution Rate of:	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit	Pension Credit Earned on or after 10/1/76 at a Contribution Rate of:	Monthly Benefit Amount per Pension Credit
	2.80	132.64	3.90	178.44
	2.85	134.73	3.95	180.52
	2.90	136.81	4.00	182.60

(b) Effective for initial retirements on or after October 1, 1998, in the event an Employee earned Pension Credit during a Plan Credit Year based on more than one Contribution Rate, the Contribution Rate which determines his pension benefit for all Pension Credit earned during such Plan Credit Year shall be the average of the Contribution Rate for each hour the Employee worked in Covered Employment.

(c) Effective for initial retirements prior to October 1, 1998, in the event an Employee earned Pension Credit during a Plan Credit Year based on more than one Contribution Rate, the Contribution Rate which determines his pension benefit for all Pension Credit earned during such Plan Credit Year shall be the highest Contribution Rate at which an Employee worked in Covered Employment for at least 500 hours (200 hours between October 1, 1994 and October 1, 1996 and 250 hours before October 1, 1994) in that Plan Credit Year.

If an Employee did not work at least 500 hours (200 hours between October 1, 1994 and October 1, 1996 and 250 hours before October 1, 1994) at any one

Contribution Rate in that Plan Credit Year, but did work for a total of at least 500 hours (200 hours between October 1, 1994 and October 1, 1996 and 250 hours before October 1, 1994) for that Plan Credit Year, the Contribution Rate which determines his pension benefit for all Pension Credit earned during such Plan Credit Year shall be based on the average Contribution Rate for that period. The average Contribution Rate will be determined as follows:

(1) The contributions paid to the Pension Fund on behalf of an Employee during the Plan Credit Year shall be totalled;

(2) The number of hours for which contributions were paid during that same Plan Credit Year on behalf of an Employee shall be totalled:

(3) The total contributions shall be divided by the total hours. The result shall then be rounded to the nearest whole cent (or to the nearest multiple of 5 cents, for Plan Credit Years prior to October 1, 1976) and that shall be the average Contribution Rate.

(d) This subsection (d) shall apply to Non-Construction Employers who become signatory to a Collective Bargaining Agreement on or after May 1, 1998 or Employers with non-bargained employees who become signatory to any other agreement requiring contributions to this Fund on or after May 1, 1998.

(1) Employees of an Employer under this subsection (d) shall earn the monthly benefit amount per Pension Credit as set forth in Section 3.4(a)(2) except for contribution rates below $0.60 as set forth below:

Hourly Contribution Rate	Monthly Benefit Amount Per Pension Credit
$0.10	$ 8.65
$0.20	$13.20
$0.30	$17.75
$0.40	$21.65
$0.50	$25.30

(2) If an Employee covered under this subsection (d) completes one Year of Vesting Service after his Employer begins participation in this Fund, then he shall be entitled to a monthly benefit for each year of Vesting Service earned for his employment prior to his Employer participating in this Fund. The monthly benefit amount shall be $15.00 for each year of Vesting Service for his employment prior to his Employer participating in this Fund.

(3) If an Employer covered under this subsection (d) withdraws from the Fund within five years of participation, then only the pension associated with years of Vesting Service for his employment prior to his Employer participating in this Fund that was fully funded shall be granted to that Employer's Participants. The funded amount shall be determined by the Fund's actuary. The monthly benefit amount of any Participant who retired during the five year period will not be reduced as a result of this provision.

* * *

17. Section 6.7 is deleted and amended in its entirety to read as follows:

Section 6.7 - Suspension of Benefits:

(a) An Employee shall have his pension suspended for any period of Disqualifying Employment as defined below.

(b) For Employees who initially retired prior to October 1, 1998, Disqualifying Employment shall be defined as follows:

(1) Initially retired prior to the Participant's 53rd birthday: Disqualifying Employment with an Employer in any capacity in the construction industry (either as a union or non-union construction worker).

(2) Initially retired on or after the Participant's 53rd birthday but before the Participant turned age 70-½: Disqualifying Employment is employment as defined in Section 6.7(b)(1) for any month in which the Employee works 40 or more hours per month.

(3) Initially retired after the Participant turned age 70-½: There shall be no Disqualifying Employment.

(c) For Employees who initially retire on or after October 1, 1998, Disqualifying Employment shall be defined as follows:

(1) Initially retire on or after the Participant's 53rd birthday Disqualifying Employment is either:

(i) Employment with an Employer in any capacity in the construction industry (either as a union or non-union construction worker), or

(ii) Employment which results in any type of compensation for services rendered, as defined by the Internal Revenue Service, which is subject to Social Security taxes and/or self-employment taxes, but only with respect to benefits accrued after September 30, 1998.

(2) Initially retire on or after the Participant's 53rd birthday but before the Participant turns age 70-½: Disqualifying Employment is employment as defined Section 6.7(b)(1) for any month in which the Employee works at least 40 hours per month.

(3) Initially retire after the Participant turns age 70-½: There is no Disqualifying Employment.

(d) Definition of Suspension. "Suspension of benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments, in accordance with Section 6.7(g)(2).

(e) Notices.

(1) Upon commencement of pension payments, the Trustees shall notify the Pensioner of the Plan rules governing suspension of benefits, including identity, of the industries and area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or area covered by the Plan.

(2) A Pensioner shall notify the Plan in writing within 15 days after starting work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Pensioner has worked in disqualifying employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that he has ceased disqualifying employment. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of benefits.

If a Pensioner has worked in disqualifying employment for any number of hours and he has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in such work for as long as the Employer has remained actively engaged at that site. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of his benefits.

The Trustees shall inform all retirees at least once every 12 months of the reemployment notification requirements and the presumptions set forth in this paragraph.

(3) A Pensioner whose pension has been suspended shall notify the Plan when disqualifying employment has ended. The Trustees shall have the

right to hold back benefit payments until such notice is filed with the Plan.

(4) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.

(5) The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his disqualifying employment ends. If the Plan intends to recover prior overpayments by offset under Paragraph 6.7(d) or 6.7(g)(2), the suspension notice shall explain the offset procedure and identify the amount expected to be recovered and the periods of employment to which they relate.

(f) Review. A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees as set forth in Section 6.4.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

(g) Resumption of Benefit Payments.

(1) Benefits shall be resumed for the months after the last month for which benefits were suspended, with payments beginning no later than the third month after the last calendar month for which the Participant's benefits was suspended, provided the Participant has complied with the notification requirements of Paragraph 6.7(e)(3) above.

(2) If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments in an amount not to exceed 25 percent of the monthly pension amount (before deductions), except that the Plan may withhold up to 100 percent of the first monthly pension payment made upon resumption after a suspension. If a Pensioner dies before recovery of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or Spouse, subject to the 25 percent limitation on the rate of reduction.

(h) Notwithstanding any other provision of this section, prior to October 1, 1997, no employment after April 1 of the calendar year following the calendar year in which the Participant attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant.

Effective October 1, 1997, if the Participant attains age 70-½ prior to January 1, 1996, he may elect that no employment after April 1 of the calendar year following the calendar year in which he attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant. If he elects to defer

commencement of his Pension until the April 1 following the calendar year in which he retires, all employment after the April 1 following the calendar year in which he retires shall be considered Disqualifying Employment. If the participant attains age 70-½ after December 31, 1995, all employment after the April 1 following the calendar year in which he retires shall be considered Disqualifying Employment.

EXCERPTS FROM AMENDMENT NO. 8 TO THE PENSION PLAN OF THE CENTRAL LABORERS' PENSION FUND, EFFECTIVE OCTOBER 1, 1999

2. Section 3.13, Service-Only Pension-Eligibility is deleted in its entirety and amended to read as follows:

Section 3.13. Service-Only Pension—Eligibility.

(a) With respect to pension benefits earned on or after October 1, 1999, a Participant may Retire on a Service—Only Pension after he has attained age 53 provided he has at least 30 Pension Credits based on Hours of Work in Covered Employment. Hours of Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b). Pension Credits for purposes of the Service-Only Pension, as defined in this Section 3.13(a), must be earned as a Participant in the Central Laborers' Pension Fund.

With respect to eligibility for the Service-Only Pension, in order for a Participant to have Retired after age 53, he must have completed (1) or (2) below.

(1) He earned at least one-half (½) of a Year of Vesting Service in each of the two (2) immediately proceeding full Plan Credit Years preceding the Plan Credit Year in which he turned age 53, or in which he left Covered Employment, if later, or

(?) He earned at least one and one-half (l-½) Years of Vesting Service during the period which consists of the two immediately preceding full Plan Credit Years and the partial Plan Credit Year in which he turned age 53, or in which he left Covered Employment, if later.

Notwithstanding the above, in no event can pension benefits earned on or after October 1, 1999 commence earlier than the first day of the month following attainment of age 53.

(b) With respect to pension benefits earned prior to October 1, 1999, a Service-Only Pension shall be payable as follows:

(1) A Participant who first entered the Plan on or after January 1, 1997, or who entered the Plan on or after January 1, 1997 after incurring a Permanent Break in Service, as defined in Sections 4.3(c), (d) or (e), may Retire on a Service-Only Pension if he has a total of 25 Years of Vesting Service, as defined in Section 4.2, based on Hours of Work in Covered Employment. Hours of Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b). Vesting Service for purposes of the Service-Only Pension, as defined in Section 3.13(b), must be earned as a Participant in the Central Laborers' Pension Fund.

(2) A Participant who entered the Plan prior to January 1, 1997 may Retire on a Service-Only Pension if he has a total of 30 Pension Credits or 30 Years of Vesting Service based on Hours of Work in Covered Employment. Hours of Work in Covered Employment before the Contribution Period shall be credited as defined in Section 4.1(b).

Notwithstanding the above, in no event can pension benefits earned prior to October 1, 1999 commence earlier than the first day of the month following Retirement.

* * *

13. Section 6.7, Suspension of Benefits, is deleted in its entirety and amended to read as follows:

Section 6.7. Suspension of Benefits:

(a) A Participant shall have his pension benefit suspended for each month in which he works in Disqualifying Employment, as defined below.

(b) For Participants who Retire or re-Retire after October 1, 1999, Disqualifying Employment shall be defined as follows:

(1) For a Participant who Retires or re-Retires prior to his 53rd birthday, Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following his 53rd birthday is all employment which results in any type of compensation for services rendered, as defined by the Internal Revenue Service, which are subject to Social Security taxes and/or self-employment taxes.

(2) For a Participant who Retires or re-Retires on or after his 53rd birthday, or for a Participant who Retired prior to his 53rd birthday and who remained Retired after his 53rd birthday. Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following the date he turns age 70-½ is employment with an Employer in any capacity in the construction industry including, but not limited to, employment as a union or non-union construction worker, for any month in which the Participant works at least 40 hours per month.

(3) For a Participant who Retires or re-Retires after he turns age 70-½, or for a Participant who

Retired prior to age 70-½ and who remained Retired after age 70-½, there is no Disqualifying Employment.

(c) For Participants who Retired or re-Retired between October 1, 1998 and October 1, 1999 and who are receiving pension benefit payments on October 1, 1999, Disqualifying Employment shall be defined as follows:

(1) For a Participant who Retired or re-Retired prior to his 53rd birthday, Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following his 53rd birthday is:

(i) All employment with an Employer in any capacity in the construction industry including, but not limited to, employment as a union or non-union construction worker.

(ii) And with respect to benefits accrued after September 30, 1998, Disqualifying Employment will also include all employment which results in any type of compensation for services rendered, as defined by the Internal Revenue Service, which are subject to Social Security taxes and/or self-employment taxes

(2) For a Participant who Retired or re-Retired on or after his 53rd birthday, or for a Participant who Retired prior to his 53rd birthday and who remained Retired after his 53rd birthday, Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following the date he turns age 70-½ is employment with an Employer in any capacity in the construction industry including, but not limited to, employment as a union or non-

union construction worker, for any month in which the Participant works at least 40 hours per month.

(3) For a Participant who Retired or re-Retired after he turned age 70-½, or for a Participant who Retired prior to age 70-½ and who remained Retired after age 70-½, there is no Disqualifying Employment.

(d) For a Participants [sic] who Retired or re-Retired prior to October 1, 1998 and who are receiving pension benefit payments on October 1, 1999, Disqualifying Employment shall be defined as follows:

(1) For a Participant who Retired or re-Retired prior to his 53rd birthday, Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following his 53rd birthday is all employment with an Employer in any capacity, in the construction industry including, but not limited to, employment as a union or non-union construction worker.

(2) For a Participant who Retired or re-Retired on or after his 53rd birthday, or for a Participant who Retired prior to his 53rd birthday and who remained Retired after his 53rd birthday, Disqualifying Employment during the period from his Retirement or re-Retirement date through the first day of the month following the date he turns age 70-½ is employment with an Employer in any capacity, in the construction industry including, but not limited to, employment as a union or non-union construction worker, for any month in which the Participant works at least 40 hours per month.

(3) For a Participant who Retired or re-Retired after he turned age 70-½, or for a Participant who Retired prior to age 70-½ and who remained Retired after age 70-½, there is no Disqualifying Employment.

(e) Definition of Suspension. "Suspension of pension benefits" for a month means non-entitlement to pension benefits for that month. If pension benefits were paid for any month for which pension benefits were later determined should have been suspended, the overpayment shall be recoverable through deductions from future pension benefit payments, in accordance with Section 6.7 (h).

(f) Notices.

(1) Upon commencement of pension benefit payments, the Trustees shall notify the Pensioner of the Plan rules governing suspension of pension benefits, including identity of the industries and area covered by the Plan. If pension benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or area covered by the Plan.

(2) A Pensioner shall notify the Plan in writing within 15 days after starting work of any type that is or may be considered Disqualifying Employment under the provisions of the Plan, without regard to the number of hours of such work. If a Pensioner works in Disqualifying Employment in any month and fails to give timely notice to the Plan of such employment, the Trustees shall presume that he will continue working in Disqualifying Employment for each subsequent

month until he gives notice that he has ceased Disqualifying Employment. The Participant shall have the right overcome such presumption by establishing to the satisfaction of the Trustees that his work was not Disqualifying Employment.

If a Pensioner works in Disqualifying Employment and he fails to give timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in Disqualifying Employment for as long as the Employer has remained actively engaged at that site. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not Disqualifying Employment.

The Trustees shall inform all Pensioners and Beneficiaries at least once every 12 months of the re-employment notification requirements and the presumptions set forth in this Section.

(3) A Pensioner whose pension benefit has been suspended shall notify the Plan when his Disqualifying Employment has ended. The Trustees shall have the right to hold back pension benefit payments until such notice is filed with the Plan.

(4) A Participant may ask the Trustees whether a particular employment will be considered Disqualifying Employment. The Trustees shall provide the Participant with their determination.

(5) The Plan shall inform a Participant of any suspension of his pension benefits by notice given by personal delivery or first class mail during the first calendar month in which his pension benefits are suspended. Such notice shall include a description of the specific reasons for the

suspension, copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor, if applicable, and a statement of the procedure for securing a review of his suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his Disqualifying Employment ends. If the Plan intends to recover prior overpayments by offset under Section 6.7(e) or 6.7(h), the suspension notice shall explain the offset procedure and identify the amount expected to be recovered and the periods of employment to which they relate.

(g) Review. A Participant shall be entitled to a review of the determination regarding the suspension of his pension benefits by written request filed with the Trustees as set forth in Section 6.4.

The same right of review shall apply, under the same terms, to a determination by the Trustees that contemplated employment will be considered Disqualifying Employment.

(h) Resumption of Benefit Payments.

(1) Pension benefits shall resume the first day of the month after the last month in which the Participant worked in Disqualifying Employment, with payments beginning no later than the third month after the last calendar month for which the Participant's pension benefits were suspended, provided the Participant has complied with the notification requirements.

(2) If pension benefits were paid for a month for which benefits were later determined should have been suspended, the overpayment shall be recoverable through deductions from future pension

benefit payments in an amount not to exceed twenty-five percent (25%) of the monthly pension benefit amount (before deductions), except that the Plan may withhold up to one hundred percent (100%) of the first monthly pension benefit payment made upon resumption after a suspension. If a Pensioner dies before recovery of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or Spouse, subject to the twenty-five percent (25%) limitation on the rate of reduction.

(i) Notwithstanding any other provision of this section, prior to October 1, 1997, no employment after April 1 of the calendar year following the calendar year in which the Participant attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant.

Effective October 1, 1997, if the Participant attains age 70-½ prior to January 1, 1996, he may elect that no employment after April 1 of the calendar year following the calendar year in which he attains age 70-½ shall be considered Disqualifying Employment with respect to such Participant. If he elects to defer commencement of his pension benefit until the April 1 following the calendar year in which he Retires, all employment after the April 1 following the calendar year in which he Retires shall be considered Disqualifying Employment. If the Participant attains age 70-½ after December 31, 1995, all employment after the April 1 following the calendar year in which he Retires shall be considered Disqualifying Employment.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CAPTION OMITTED

AFFIDAVIT OF BARRY C. McANARNEY

I, BARRY C. McANARNEY ("Affiant"), hereby swear and depose under oath that I am an adult without disability and, if called upon to testify in the above-captioned cause, would and will testify truthfully as follows:

1. Affiant is and at all times relevant hereto was the Executive Director of the Central Laborers' Pension Fund (the "Fund"); he has personal knowledge of all the factual statements made herein.

2. The Fund is a multi-employer pension fund governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and whose participants are primarily laborers in the construction industry.

3. Thomas E. Heinz ("Heinz"), a participant in the Central Laborers' Pension Plan (the "Plan") and a Plaintiff in the above-described lawsuit, elected to retire with a service credit pension from the Fund effective January 1, 1996; Mr. Heinz was born on June 2, 1956, and, accordingly, was 39 years, 6 months (rounded to the nearest month) when he retired.

4. Richard J. Schmitt ("Schmitt"), a participant in the Plan and a Plaintiff in the above-described lawsuit, elected to retire with a service credit pension from the Fund effective December 1, 1996; Mr. Schmitt was born on November 23, 1957, and, accordingly, was age 39 years (rounded to the nearest month) when he retired.

5. Plan retirees who engage in "Disqualifying Employment," as defined by the Plan, are subject to suspension of their pension benefits.

6. Under the terms of the Plan, the "normal retirement age" is 65 years of age.

7. Effective October 1, 1996, retirees under age 60, as described in Plan Section 6.7(b), would have their benefits suspended if they worked 40 hours or more in "Disqualifying Employment," which was defined as follows:

> Employment with an Employer in a job classification of any type specified and covered in a collective bargaining agreement or in any occupation or job classification where contributions are to be made to the Fund pursuant to a written agreement (either as a union or non-union construction worker).

8. Under the foregoing "Disqualifying Employment" rule, work as a non-union supervisor would not have resulted in a suspension of benefits since such work was not considered "Disqualifying Employment."

9. On or about September 19, 1997, the Fund's actuarial consultants, the Segal Company, reported that the Fund had experienced an actuarial loss of $30.2 million for the Plan year ending September 30, 1996.

10. After analysis by and consultation with the Segal Company, the Fund's Board of Trustees adopted Plan amendments, including more restrictive "Disqualifying Employment" rules, to eliminate future actuarial losses and preserve the fiscal integrity of the Fund for the benefit of all participants and retirees.

11. Specifically, effective October 1, 1998, Plan Section 6.7(b) was amended in part as follows: (b) For Employees

who initially retired prior to October 1, 1998, Disqualifying Employment shall be defined as follows:

(1) Initially retired prior to the participant's 53rd birthday:

Disqualifying Employment in any capacity in the construction industry (either as a union or non-union construction worker).

12. Notification of the Plan amendments affecting Disqualifying Employment was sent to all retirees then in pay-status, including Heinz and Schmitt, by letter from the Affiant, dated July 22, 1998, and mailed by regular mail, postage prepaid, on or about that date. A copy of said letter is attached hereto as "Exhibit A-1".

13. Notification of the Plan amendments affecting Disqualifying Employment was sent to all participants and retirees, including Heinz and Schmitt, through the Fund's newsletter on or about August 14, 1998, a copy of which is attached hereto as "Exhibit A-2."

14. Subsequent to October 1, 1998, the Fund office was advised that Heinz was employed in a supervisory capacity by R. A. Cullinan & Son, Inc. of Tremont, Illinois; as a result, Heinz's pension benefits were suspended as of March 1, 1999.

15. Subsequent to October 1, 1998, the Fund office was advised that Schmitt was employed in a supervisory capacity by Seneca Petroleum Company of Peoria, Illinois; as a result, Schmitt's pension benefits were suspended as of February 1, 1999.

16. Both Heinz and Schmitt subsequently appealed their benefit suspensions to the Fund's Board of Trustees; both appeals were denied.

17. In addition to Heinz and Schmitt, five (5) other fund retirees had their benefits suspended after it was reported that

they worked as construction supervisors. Of these five(5), two (2) appealed their suspensions to the Board of Trustees and were also denied.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Barry C. McAnarney
BARRY C. MCANARNEY

Subscribed and sworn to before me this 6th day of February, 2000.

/s/ Melanie D. Brown
Notary Public

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CAPTION OMITTED

AFFIDAVIT OF DAVID A. DEAN

I, DAVID A. DEAN ("Affiant"), hereby swear and depose under oath that I am an adult without disability and, if called upon to testify in the above-captioned cause, would and will testify truthfully as follows:

1. Affiant is and at all times relevant hereto was a Benefits Consultant and Actuary in the Chicago, Illinois, office of The Segal Company.

2. Affiant, an Enrolled Actuary and a member of The American Academy of Actuaries, has more than twenty (20) years of experience in the actuarial and consulting fields.

3. In his capacity as a Benefits Consultant and Actuary for The Segal Company, Affiant has worked since 1996 with Central Laborers' Pension Fund ("Fund"), a multi-employer pension fund with offices in Jacksonville, Illinois.

4. In the plan year ended September 30, 1996, the Fund experienced a net actuarial loss of approximately $30.2 million, primarily resulting from the high rates of retirement by plan participants at very early ages (i.e., earlier than 53).

5. In order to preserve the fiscal integrity of the Fund, The Segal Company, in the fall of 1997, among other things, recommended that the Fund adopt more restrictive "disqualifying employment" provisions so as to prevent "double dipping" by participants in the Fund, i.e., drawing a service pension (a Fund pension which commences prior to the attainment of normal retirement age) and thereafter continuing to work. The recommended disqualifying employment provisions were intended to discourage retirements at very early ages by further limiting re-employment after retirement.

6. Such very early retirements (i.e., prior to age 53) represent a significant actuarial cost to the Fund inasmuch as Plan benefits greatly exceed the contributions by the participants. Allowing a participant to "double dip" provides an unintended incentive to a participant to retire at a very early age, thereby resulting in excessive actuarial costs to the Fund.

7. On July 20, 1998, the Fund's Board of Trustees approved The Segal Company's recommendations to impose more restrictive disqualifying employment rules, effective October 1, 1998.

8. Affiant has apprised himself of all relevant data and criteria pertinent to determining the normal retirement age benefits of Plaintiff/claimant, RICHARD J. SCHMITT, JR., and Plaintiff/claimant THOMAS E. HEINZ with the Fund.

9. The relevant criteria for determining the normal retirement age benefits of a participant in the Central Laborers' Pension Fund are as follows: (a) date of birth; (b) first year in covered employment: (c) pension starting date; (d) normal retirement age; (e) lump sum value of normal retirement benefit commencing on normal retirement age; (f) monthly normal retirement benefit commencing on normal retirement age.

10. With respect to the actuarial calculations pertinent to both Plaintiffs' normal retirement benefits, the following actuarial assumptions have been made: actuarial equivalence as defined in Section 1.22 of Central Laborers' Pension Plan (a copy of which is attached hereto as "Exhibit B-1") using 6.07% interest and the 1983 Group Annuity Mortality Table

(50% Male/50% Female). Further, both Plaintiffs have elected monthly pension benefits for single life.

11. With regard to Plaintiff, RICHARD J. SCHMITT, JR., the data pertinent to said criteria are as follows:

(a) Date of birth	11/23/57
(b) First year in covered employment	1976
(c) Pension starting date	12/1/96
(d) Normal retirement age (age 65)	11/23/22
(e) Lump sum value of normal retirement benefit commencing on normal retirement age	$242,660.74[1]
(f) Monthly normal retirement benefit commencing on normal retirement age	$1,909.76[2]

12. With regard to Plaintiff THOMAS E. HEINZ the data pertinent to said criteria are as follows:

(a) Date of birth	6/2/56
(b) First year in covered employment	1975
(c) Pension starting date	1/1/96
(d) Normal retirement age (age 65)	6/2/21

[1] Lump sum value determined as of normal retirement age.

[2] This amount unreduced by Section 415 (I.R.C. Section 415) limitations, as it is expected the limits will not apply when the participant reaches his normal retirement age. Section 415 limits the amount of pension payments that can be paid from a pension plan. Further, this sum has been adjusted due to an early partial lump sum withdrawal by claimant and may be further adjusted to reflect any hours reported after pension starting date.

(e) Lump sum value of normal retirement benefit commencing on normal retirement age	$213,021.91[3]
(f) Monthly normal retirement benefit commencing on normal retirement age	$1,676.50[4]

Data regarding the suspension of the Plaintiffs' respective service pensions, and the fact that the Plaintiffs' respective service pensions were suspended, are wholly immaterial to the calculation of the normal retirement benefits (lump sum or monthly benefits) to which the respective Plaintiffs are entitled, and are likewise wholly immaterial to the calculation of the actuarial equivalence thereof.

14. The suspension of the Plaintiffs' respective service pensions has not reduced, terminated, or in any way affected, nor will it reduce, terminate, or in any way affect, the Plaintiffs' respective entitlement of normal retirement benefits (lump sum or monthly benefits) payable after attainment of normal retirement age, or the actuarial equivalence thereof.

AFFIANT FURTHER SAYETH NAUGHT

[3] Lump sum value determined as of normal retirement age.

[4] This amount unreduced by Section 415 (I.R.C. Section 415) limitations, as it is expected the limits will not apply when the participant reaches his normal retirement age. Section 415 limits the amount of pension payments that can be paid from a pension plan. Further, this sum has been adjusted due to an early partial lump sum withdrawal by claimant and may be further adjusted to reflect any hours reported after pension starting date.

/s/ David A. Dean
DAVID A. DEAN

SUBSCRIBED and SWORN to before me this 3rd day of February, 2000.

/s/ Michelle E. Clark
Notary Public